

RESOLUTION NO. R16-05

A RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE MAYOR TO EXECUTE AN EASEMENT AND BUY/SELL AGREEMENT WITH MONTE AND TESHA HOWREY FOR THE PURPOSE OF CONSTRUCTING, OPERATING, MAINTAINING, REPLACING AND REPAIRING OF UNDERGROUND UTILITIES, AND PURCHASING .2 ACRES OF PROPERTY FOR PLACEMENT OF A CONTROL BUILDING.

WHEREAS, an "Easement" between Monte W. Howrey and Tesha L. Howrey as Grantors and the City of Laurel as Grantee has been prepared; and

WHEREAS, said easement will allow the City access across certain portions of real property owned by the Grantors in order to construct and maintain the City's water pipelines and associated underground utilities in the Yellowstone River; and

WHEREAS, the City requires a .2 acre parcel of land to construct a control building required to maintain the pipelines and underground utilities; and

WHEREAS, acceptance of the easement is in the best interests of the City, as it is necessary to maintain existing water service to the City's citizens and businesses.

NOW, THEREFORE, BE IT RESOLVED that the City Council hereby accepts the attached Easement and Buy/Sell Agreement and authorizes the Mayor to execute both on behalf of the City.

INTRODUCED at a special meeting of the City Council on January 12, 2016, by Council Member Dickerson.

PASSED and APPROVED by the City Council of the City of Laurel this 12th day of January, 2016.

APPROVED by the Mayor this 12th day of January, 2016.

CITY OF LAUREL



Mark A. Mace, Mayor

ATTEST:



Shirley Ewan, City Clerk/Treasurer

Approved as to Form:



Sam S. Painter, Civil City Attorney

CITY HALL
115 W. 1ST ST.
PUB. WORKS: 628-7496
WATER OFC.: 628-7431
COURT: 628-1964
FAX 628-2241

City Of Laurel

P.O. Box 10
Laurel, Montana 59044



Office of the Chief
Administrative Officer

January 7, 2016

Ms. Hertha Lund
Lund Law, PLLC
662 S Ferguson Ave Unit 2
Bozeman, MT 59718

RE: City of Laurel Combined Offer: Easements and Land Purchase

Dear Ms. Lund:

On behalf of the City of Laurel, please extend this offer to your clients. If your clients accept, would you kindly have them email or FAX a copy of the signature page to you for immediate delivery to the City? I would like to get this transaction immediately finalized and would be seeking approval from the City Council next week. As part of this offer, I would request your clients authorize the City's Surveyor access to their property to begin his work immediately after they sign this letter and the City Council approves the transaction. Payment can be tendered to your clients the day after the Council's approval.

As previously discussed, the City hereby offers total compensation in the amount of \$76,500 for the temporary and permanent easements, purchase of property for a control building, and reimbursement for attorney fees as follows:

1. **\$39,750.** Permanent and temporary construction easements for the transmission pipelines connecting the intake to the water treatment plant (3.38 acres of permanent easement, 5.621 acres of temporary construction easement);
2. **\$18,000.** Permanent and temporary construction easements for the air and water pipelines to connect the control building to the intake (1.21 acres of permanent easement, 3.22 acres of temporary construction easement, 0.20 acres for access road);
3. **\$17,250.** Property purchase for the control building, approximately 0.20 acres; and
4. **\$1,500.** Reimbursement for Attorney fees and costs.

In addition, the City desires access to the west side of your clients' property from Red Bridge Road via the new access road to be constructed across the McCoy Road. McCoy Road is a public road as reflected on the Red Bridge Subdivision (Corrected) plat, dated March, 1979. The access road within the extents of the public road will be constructed to Yellowstone County Standards. Be advised, once the access road enters your clients' property the City will construct

a single lane gravel road. As you requested, the City has no objection and agrees to your clients' reserving an assignable use of the City constructed road to access their property so long as their use does not interfere with the City's use.

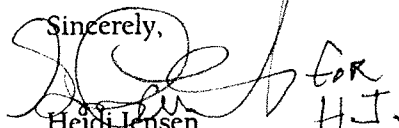
Also, for your clients' convenience, I am attaching Figures 1 and 2 that were prepared by the City's Project Engineers. Figures 1 and 2 show the location and size of the items listed in 1-3 above, as well as the proposed access road as follows:

1. Easements (temporary and permanent) for the transmission pipelines (Figure 1).
2. Easements (temporary and permanent) for air and water pipelines connecting to the control building to be constructed (Figure 2).
3. The property to be purchased where the City will construct the control building (Figure 2).

NOTE: The permanent pipeline easement will be recorded with a legal survey. The legal survey will establish the boundaries and the final acreage of the easement. As part of this Agreement, the City requests you client authorize the Surveyor to access their property to begin work when the Agreement is accepted by your clients and approved by the City Council.

Should you have any questions, please do not hesitate to contact me by phone at (406) 628-8456 ext. 4 or email at hjensen@laurel.mt.gov.

Sincerely,


Heidi Jensen
Chief Administrative Officer

Accepted by:

Monte Howrey Date

Tasha Howrey Date

Enc: Figure 1 - Intake Transmission Main Easement
Figure 2 - Control Building, Easements & Access Road Location



YELLOWSTONE RIVER

T 2 S, R 24 E

HOWREY, MONTE
& TESHA

80' CONSTRUCTION LIMITS

30' PIPELINE EASEMENT

LAUREL PROPOSED
WATER ALIGNMENT

SECTION 20
SECTION 28

E RIVER

After recording please return to:
City of Laurel
P.O. Box 10
Laurel, MT 59044

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT

Monte W. & Tesha L. Howrey, 13780 Remington Road, Vale, SD 57788 ("GRANTOR") for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grant an easement to CITY OF LAUREL, of 115 W 1st Street, Laurel, MT 59044 ("GRANTEE") pursuant to the terms and conditions provided herein.

GRANTOR is desirous of granting an easement to the GRANTEE, its successors, permittees, licensees and assigns, and its agents and employees, for construction, installation, operation and maintenance of underground utilities including parallel water pipelines generally described as follows:

The initial easement constitutes a Temporary Construction Easement during the initial construction phase of the underground utilities as further described herein and shown on the map attached hereto as Figure 1; and

Upon completion of initial construction, the easement constitutes a Permanent Maintenance and Utilities Easement as further described herein and shown on the map attached hereto as Figure 2.

The easement shall exist over and across real property owned by GRANTOR located in Yellowstone County, Montana, which shall hereafter be burdened by this easement. The burdened real property is further described as follows:

Temporary Construction Easement

An 8.841 ac. tract of land for purposes of temporary construction. This easement will be 80 feet wide, generally 40 feet on either side of the centerline of the transmission main pipes shown in Figure 1 and further described as follows;



The Temporary Construction Easement will become void upon completion of construction and acceptance of the final work product.

Permanent Easement

A 4.59 ac. tract of land constituting a permanent easement for pipelines and a 0.2 ac. tract of land for an access road to the control building. The easement is 30 feet wide, 15 feet on either side of the centerline of the transmission main pipes shown in Figure 2 and further described as follows;



GRANTOR authorizes GRANTEE to enter and access the easement at all times by utilizing existing roads, trails or other routes on the real property causing the least damage and inconvenience to GRANTOR in order to survey and establish the route and location of the easement and water lines and to:

1. Construct, inspect, operate, repair, substitute, remove, enlarge, replace and maintain the utilities, pipeline, services, connections, accessories and appurtenances; and
2. Trim, remove or otherwise control any trees and brush inside the boundaries of the easement, after notification to GRANTOR, which may, in the opinion of the GRANTEE, interfere or threaten to interfere with or be hazardous to the construction, operation and maintenance of the water pipeline.

GRANTEE agrees as follows:

1. In connection with the construction, operating, inspecting, repairing, substituting, removing, enlarging, replacing and maintaining of the water pipeline, it will repair or replace, at its sole expense, any existing fences, roads, ditches, and appurtenances of the property that may be disturbed by its construction of parallel water pipelines and maintenance of such pipelines.
2. During operations involving excavation, it will remove from the site any large rocks or surplus excavated material or any debris that may have been exposed by the excavation. GRANTEE will leave the finished surface in substantially the same condition as existed prior to construction.
3. Construction practices will include the standard provisions that the contractor repair the trench area as required by the contract plans and specifications. This includes the protection of trees where possible, defined clearing and grubbing practices, and topsoil stripping, stockpiling and replacement. The plans and specifications also detail specific trench restoration for grass/natural surface area and wetland areas. Both types of trench restoration require the placement of a minimum of 6-inches of topsoil on the disturbed area followed by re-seeding or replacement of vegetation. See Exhibit C for further details (standard specification Section 02232 – Site Clearing which is included in the contract documents for the project).

GRANTOR agrees as follows:

1. At no time will GRANTOR build, construct, erect, or maintain any permanent structure within the boundaries of the easement without the prior written consent of GRANTEE.

2. GRANTOR warrants that GRANTOR lawfully seized and possesses the real property herein described, that they have a lawful right to convey title to the property and grant an easement burdening the property and that GRANTOR shall forever defend the title to the property against the claim of all persons.

3. GRANTEE may peaceably hold and enjoy the rights and privileges herein granted without interruption by GRANTOR and their assigns and/or successors.

RESERVATION OF RIGHTS. GRANTOR, and any subsequent assigns and/or successors, specifically reserve the right to the continued and uninterrupted use of the property, the easement, and access road for purposes that will not interfere with GRANTEE'S use and enjoyment of the rights granted pursuant to this easement.

If GRANTEE ceases to utilize the easement for the purposes described herein, the easement will terminate upon notice being given to the GRANTEE stating GRANTOR'S assertion of abandonment of easement.

This instrument shall be binding upon the parties hereto and all successors in interest and assigns of the parties.

IN WITNESS WHEREOF, the undersigned have hereunto set their hands this _____ day of _____, 2016.

Monte W. Howrey

Tessa L. Howrey

STATE OF South Dakota)
 : ss
County of _____)

This instrument was acknowledged before me on _____, 2016, by MONTE W. HOWREY and TESSA L. HOWREY.

Notary Public for the State of South Dakota

Acknowledgement and Acceptance of Easement:

The Mayor for the City of Laurel, Yellowstone County Montana, on behalf of the City Council, acknowledges receipt of this Easement and hereby accepts the Easement conveyed through this instrument pursuant to City Council Resolution # _____.

this _____ day of _____, 2016.

Mark A. Mace
Mayor

Attest:

Shirley Ewan
City Clerk/Treasurer

STATE OF MONTANA)
 : ss
County of Yellowstone)

This instrument was acknowledged before me on _____,
2016, by Mark A. Mace, as Mayor and Shirley Ewan, City Clerk/Treasurer.

Notary Public for the State of Montana

(NOTARIAL SEAL)



HERTHA L. LUND
ALISON P. GARAB
JULIA J. BROWN
ATTORNEYS AT LAW
662 S. Ferguson Ave., Unit 2
Bozeman, MT 59718
Telephone: (406) 586-6254
Facsimile: (406) 586-6259
www.Lund-Law.com

January 22, 2016

Via U.S. Mail

Thompson Painter Law P.C.
Professional Center @ 32nd
176 South 32nd Street West, Suite 4
Billings, MT 59102-6867
sam@thompsonpainterlaw.com

RE: Executed documents from Howrey

Dear Mr. Sam Painter:

Enclosed please find the original *Easement and Land Purchase* documents executed by Monte & Tesha Howrey. A copy of these documents was emailed to you on January 19, 2016. Please send us a copy of the documents once they have been fully executed and filed by the City of Laurel, and let us know when our clients can expect to receive their check from City of Laurel.

Sincerely,

Candice Wilson
Legal Assistant
LUND LAW, PLLC
Paralegal@Lund-Law.com

Encl. Original documents

cc: Client

CITY HALL
115 W. 1ST ST.
PUB. WORKS: 628-7496
WATER OFC.: 628-7431
COURT: 628-1964
FAX 628-2241

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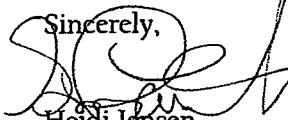
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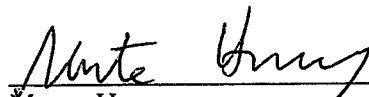
Should you have any questions, please do not hesitate to contact me by phone at (406) 628-8456 ext. 4 or email at hjensen@laurel.mt.gov.

Sincerely,

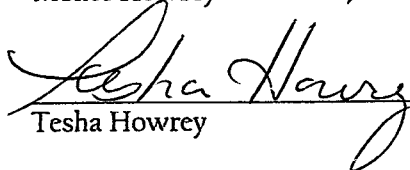

Heidi Jensen
Chief Administrative Officer

GOK
H.J.

Accepted by:


Monte Howrey
Date

1-14-16
Date


Tesha Howrey
Date

1-14-16
Date

Enc: Figure 1 - Intake Transmission Main Easement
Figure 2 - Control Building, Easements & Access Road Location

AGREEMENT TO SELL AND PURCHASE

THIS AGREEMENT is made this 26th day of January, 2016, by and between Monte W. Howrey and Tesha L. Howrey, 13780 Remington Road, Vale, SD 57788, hereinafter referred to as ("SELLERS") and the City of Laurel whose address is P.O. Box 10, Laurel, Montana 59044, hereinafter referred to as ("BUYER").

1. AGREEMENT TO PURCHASE

SELLERS, in consideration of the mutual promise and the payment herein set forth, agrees to sell and BUYER agrees to buy the following property: See Attached Figure 2 showing the location of the control building and access road. Upon execution of this Agreement, BUYER shall retain a surveyor to create a legal description of the Property to be included on SELLERS' subsequently executed Deed.

2. PURCHASE PRICE

BUYER agrees to pay SELLERS the amount of seventeen thousand and two hundred and fifty dollars (\$17,250) in consideration of this Agreement for the Property shown on the Attached Figure 2.

3. CONVEYANCE

SELLERS shall convey the real property by Warranty Deed, free of all liens and encumbrances provided herein. BUYER shall provide the Warranty Deed for SELLERS' transfer of the Property after the Property is surveyed and a legal description is obtained.

4. BUYER'S ADDITIONAL RESPONSIBILITIES

- a. BUYER understands that he/she is responsible for all taxes or encumbrances which may accrue on the above described property, beginning with the first half of taxes due in 2016 and all subsequent taxes for the Property.
- b. Subsequent to the closing, BUYER shall allow SELLERS to continuously utilize the access road constructed pursuant to this Agreement for access.
- c. BUYER shall obtain title insurance for the purchased property at its own expense prior to the date of closing.

5. BUYER TAKES PROPERTY "AS IS"

BUYER acknowledges that he/she is not buying this Property because of any warranty, representation, information or promises made by SELLERS or anyone acting for or on behalf of SELLERS, which are not specifically set forth in this Agreement.

6. **COMPLETE CONTRACT**

BUYER and SELLER acknowledge that this Agreement represents the complete contract. Any changes or additions will be in writing and included in an additional Agreement and signed by both parties. **Oral statements or discussions are not considered part of this Agreement.**

7. **SPECIFIC PERFORMANCE**

BUYER AND SELLERS agree that if a breach of this Agreement occurs, the non-breaching party may seek specific performance by filing an action in the 13th Judicial District Court for Yellowstone County, Montana. If successful, the non-breaching Party shall be entitled to recover attorney's fees and costs incurred by him/her.

8. **BUYER'S ACKNOWLEDGMENT**

By signing this Agreement, I acknowledge that I understand and accept any conditions set forth. Further, I will pay the agreed entire sum of seventeen thousand and two hundred and fifty dollars (\$17,250) for the above-described Property on the closing date agreed upon by the Parties, no later than 5:00 p.m. on January 31, 2016.

CITY OF LAUREL, MONTANA

BY Marla A. Mace DATE 1-26-2016

Title: Mayor

9. **SELLERS' ACKNOWLEDGMENT**

By signing this Agreement, we acknowledge that we understand and accept the conditions set forth. Further, we have agreed to the purchase price amount of \$17,250 for the above described property and will surrender any claim or title to that property upon payment by the BUYER through the execution and issuance of the appropriate Warranty Deed.

Monte W. Howrey and Tesha L. Howrey

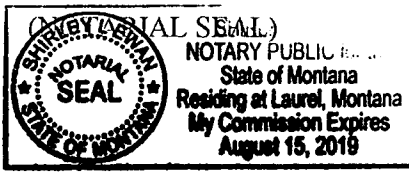
BY Monte W. Howrey DATE 1-14-16

BY Tesha L. Howrey DATE 1-14-16

STATE OF MONTANA)
)
 ss:
County of Yellowstone)

On this 26th day of January, 2016, before me, a Notary Public for the State of Montana, personally appeared Mark A. Mace known to me to be the person whose name(s) is/are subscribed to the within instrument as BUYER, and acknowledged to me that he/she executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.

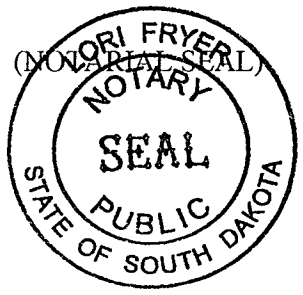


[Signature]
Notary Public for the State of Montana
Residing at Laurel, Montana
My Commission expires: August 15, 2019

STATE OF South Dakota)
)
 ss:
County of Lawrence)

On this 17 day of January, 2016, before me, a Notary Public for the State of South Dakota, personally appeared Monte Hawrey and Tesha Hawrey known to me to be the persons whose name(s) is/are subscribed to the within instrument as SELLERS, and acknowledged to me that they have executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year hereinabove first written.



[Signature]
Notary Public for the State of South Dakota
Residing at Whitewood South Dakota
My Commission expires: _____

My Commission Expires
June 7, 2020